

interstate transport of air pollutants from one or more States contributes significantly to a violation of a national ambient air quality standard in one or more other States, the Administrator may establish, by rule, a transport region for such pollutant that includes such States. The Administrator, on the Administrator's own motion or upon petition from the Governor of any State, or upon the recommendation of a transport commission established under subsection (b) of this section, may—

(1) add any State or portion of a State to any region established under this subsection whenever the Administrator has reason to believe that the interstate transport of air pollutants from such State significantly contributes to a violation of the standard in the transport region, or

(2) remove any State or portion of a State from the region whenever the Administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the attainment of the standard in any area in the region.

The Administrator shall approve or disapprove any such petition or recommendation within 18 months of its receipt. The Administrator shall establish appropriate proceedings for public participation regarding such petitions and motions, including notice and comment.

#### **(b) Transport commissions**

##### **(1) Establishment**

Whenever the Administrator establishes a transport region under subsection (a) of this section, the Administrator shall establish a transport commission comprised of (at a minimum) each of the following members:

(A) The Governor of each State in the region or the designee of each such Governor.

(B) The Administrator or the Administrator's designee.

(C) The Regional Administrator (or the Administrator's designee) for each Regional Office for each Environmental Protection Agency Region affected by the transport region concerned.

(D) An air pollution control official representing each State in the region, appointed by the Governor.

Decisions of, and recommendations and requests to, the Administrator by each transport commission may be made only by a majority vote of all members other than the Administrator and the Regional Administrators (or designees thereof).

##### **(2) Recommendations**

The transport commission shall assess the degree of interstate transport of the pollutant or precursors to the pollutant throughout the transport region, assess strategies for mitigating the interstate pollution, and recommend to the Administrator such measures as the Commission determines to be necessary to ensure that the plans for the relevant States meet the requirements of section 7410(a)(2)(D) of this title. Such commission shall not be subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

#### **(c) Commission requests**

A transport commission established under subsection (b) of this section may request the Administrator to issue a finding under section 7410(k)(5) of this title that the implementation plan for one or more of the States in the transport region is substantially inadequate to meet the requirements of section 7410(a)(2)(D) of this title. The Administrator shall approve, disapprove, or partially approve and partially disapprove such a request within 18 months of its receipt and, to the extent the Administrator approves such request, issue the finding under section 7410(k)(5) of this title at the time of such approval. In acting on such request, the Administrator shall provide an opportunity for public participation and shall address each specific recommendation made by the commission. Approval or disapproval of such a request shall constitute final agency action within the meaning of section 7607(b) of this title.

(July 14, 1955, ch. 360, title I, §176A, as added Pub. L. 101-549, title I, §102(f)(1), Nov. 15, 1990, 104 Stat. 2419.)

#### **REFERENCES IN TEXT**

The Federal Advisory Committee Act, referred to in subsec. (b)(2), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### **§ 7507. New motor vehicle emission standards in nonattainment areas**

Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if—

(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

Nothing in this section or in subchapter II of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a "third vehicle") or otherwise create such a "third vehicle".

(July 14, 1955, ch. 360, title I, §177, as added Pub. L. 95-95, title I, §129(b), Aug. 7, 1977, 91 Stat. 750; amended Pub. L. 101-549, title II, §232, Nov. 15, 1990, 104 Stat. 2529.)

#### **AMENDMENTS**

1990—Pub. L. 101-549 added sentence at end prohibiting States from limiting or prohibiting sale or manufacture of new vehicles or engines certified in California as having met California standards and from taking

any actions where effect of those actions would be to create a "third vehicle".

#### § 7508. Guidance documents

The Administrator shall issue guidance documents under section 7408 of this title for purposes of assisting States in implementing requirements of this part respecting the lowest achievable emission rate. Such a document shall be published not later than nine months after August 7, 1977, and shall be revised at least every two years thereafter.

(July 14, 1955, ch. 360, title I, § 178, as added Pub. L. 95-95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 750.)

#### § 7509. Sanctions and consequences of failure to attain

##### (a) State failure

For any implementation plan or plan revision required under this part (or required in response to a finding of substantial inadequacy as described in section 7410(k)(5) of this title), if the Administrator—

(1) finds that a State has failed, for an area designated nonattainment under section 7407(d) of this title, to submit a plan, or to submit 1 or more of the elements (as determined by the Administrator) required by the provisions of this chapter applicable to such an area, or has failed to make a submission for such an area that satisfies the minimum criteria established in relation to any such element under section 7410(k) of this title,

(2) disapproves a submission under section 7410(k) of this title, for an area designated nonattainment under section 7407 of this title, based on the submission's failure to meet one or more of the elements required by the provisions of this chapter applicable to such an area,

(3)(A) determines that a State has failed to make any submission as may be required under this chapter, other than one described under paragraph (1) or (2), including an adequate maintenance plan, or has failed to make any submission, as may be required under this chapter, other than one described under paragraph (1) or (2), that satisfies the minimum criteria established in relation to such submission under section 7410(k)(1)(A) of this title, or

(B) disapproves in whole or in part a submission described under subparagraph (A), or

(4) finds that any requirement of an approved plan (or approved part of a plan) is not being implemented,

unless such deficiency has been corrected within 18 months after the finding, disapproval, or determination referred to in paragraphs (1), (2), (3), and (4), one of the sanctions referred to in subsection (b) of this section shall apply, as selected by the Administrator, until the Administrator determines that the State has come into compliance, except that if the Administrator finds a lack of good faith, sanctions under both paragraph (1) and paragraph (2) of subsection (b) of this section shall apply until the Administrator determines that the State has come into compliance. If the Administrator has selected one of such sanctions and the deficiency has not

been corrected within 6 months thereafter, sanctions under both paragraph (1) and paragraph (2) of subsection (b) of this section shall apply until the Administrator determines that the State has come into compliance. In addition to any other sanction applicable as provided in this section, the Administrator may withhold all or part of the grants for support of air pollution planning and control programs that the Administrator may award under section 7405 of this title.

##### (b) Sanctions

The sanctions available to the Administrator as provided in subsection (a) of this section are as follows:

##### (1) Highway sanctions

(A) The Administrator may impose a prohibition, applicable to a nonattainment area, on the approval by the Secretary of Transportation of any projects or the awarding by the Secretary of any grants, under title 23 other than projects or grants for safety where the Secretary determines, based on accident or other appropriate data submitted by the State, that the principal purpose of the project is an improvement in safety to resolve a demonstrated safety problem and likely will result in a significant reduction in, or avoidance of, accidents. Such prohibition shall become effective upon the selection by the Administrator of this sanction.

(B) In addition to safety, projects or grants that may be approved by the Secretary, notwithstanding the prohibition in subparagraph (A), are the following—

(i) capital programs for public transit;

(ii) construction or restriction of certain roads or lanes solely for the use of passenger buses or high occupancy vehicles;

(iii) planning for requirements for employers to reduce employee work-trip-related vehicle emissions;

(iv) highway ramp metering, traffic signalization, and related programs that improve traffic flow and achieve a net emission reduction;

(v) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations;

(vi) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs;

(vii) programs for breakdown and accident scene management, nonrecurring congestion, and vehicle information systems, to reduce congestion and emissions; and

(viii) such other transportation-related programs as the Administrator, in consultation with the Secretary of Transportation, finds would improve air quality and would not encourage single occupancy vehicle capacity.

In considering such measures, the State should seek to ensure adequate access to